

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 12.11.341 and the adoption of) ADOPTION
New Rule I pertaining to aquatic)
invasive species)

TO: All Concerned Persons

1. On February 19, 2016, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-460 pertaining to the public hearings on the proposed amendment and adoption of the above-stated rules at page 263 of the 2016 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.11.341 AQUATIC INVASIVE SPECIES INSPECTION STATIONS

(1) through (3) remain as proposed.

(4) Any vessel at an inspection station found with invasive species, or containing residual water and has been in infested water in the last 30 days, will be decontaminated by AIS staff as arranged by the department. Infested waters contain microscopic AIS species including zebra mussels, *Dreissenia polymorpha*, and quagga mussels, *Dreissenia bugensis*, and are identified on the map titled "Mussel-Infested States and Waterbodies" available at fwp.mt.gov. AIS staff shall refer to the map or to the most current known information. ~~Decontamination methods may include hot water washing, hot water flushing, and drying time. A decontamination order may be issued that could require a drying period as directed by the department. During the drying period, the department may lock the vessel to the trailer to prevent launching, or put it in a secured location not accessible to the owner or operator until the drying period is complete. The vessel must pass a second inspection prior to launching in Montana waters.~~

(5) Decontamination methods on vessels subject to (4) may include hot water washing, hot water flushing, and drying time, including interior portions of complex engine systems and pumps. A decontamination order may be issued that requires a drying period as directed by the department. The drying time will depend on weather conditions. During the drying period, the department may lock the vessel to the trailer to prevent launching. The department will be responsible for arranging the time and location to unlock the vessel when the drying time is complete. It is prohibited for anyone other than authorized department staff to remove the lock during the drying time. The vessel must pass a second inspection prior to launching in Montana waters in order to be considered decontaminated.

3. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (12.11.342) REMOVAL OF VEGETATION AND PLUGS

(1) remains as proposed.

(2) Upon removing a vessel from any surface waters and before leaving the associated boat launch or parking area, ~~Any~~ drain plug, bailer, valves or other device that prevents water drainage from bilges, ballasts or livewells must be removed ~~or opened during transport~~ except where otherwise provided in current published fishing regulations. If the vessel does not have a plug, reasonable measures must be taken to dry or drain all compartments or spaces that hold water. Reasonable measures include emptying bilges, application of absorbents, and ventilation. The following are exempt:

(a) and (b) remain as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment 1: The department received several comments in support of the rule language as proposed.

Response 1: The department appreciates your participation in the rule making process.

Comment 2: The department received several comments expressing concern and opposition about the proposed language regarding temporary confiscation of personal property during drying periods.

Response 2: The department has amended the proposed rule language regarding confiscation. The department believes that the decontamination methods including washing, flushing, drying, and locking the vessel to the trailer when drying time is needed, is sufficient to prevent the spread of aquatic invasive species at this time without administratively confiscating personal property.

Comment 3: The department received several comments suggesting the rule language should be more explanatory regarding the processes in which AIS staff will make decisions about decontamination and locking the vessel.

Response 3: The department has amended the proposed rule language to be more descriptive about decontamination and locking the vessel, including referring only to vessels where invasive species are found, specifically dreissenid mussels, and vessels with complex engines and pump systems.

Comment 4: The department received comments suggesting an internal policy be developed on how the rule is going to be implemented and that it be posted on the

department's web site for the public to view.

Response 4: An internal policy will be created, including an informational handout to present to boaters that go through inspection stations. This information will be posted on fwp.mt.gov.

Comment 5: The department received several comments concerning the proposed language regarding removal of the drain plug during transport. Concerns included forgetting to put the plug back in before launching and sinking the boat, difficulty removing some drain plugs, and that all the water still may not drain.

Response 5: The department has amended the proposed language to remove the requirement for drain plugs to remain out during transport but still requiring removal before leaving the water body or associated parking area. Regardless of the difficulty to remove a drain plug, the best practice for draining a boat is to remove the plug. Even though draining a boat may not be 100% effective to drain all of the water, it is the standard management practice. For places in the boat that are accessible, an absorbent material could be used to remove the remainder of the water.

Comment 6: The department received several comments regarding delays, congestion, and safety at boat ramps from the requirement to remove the drain plug and vegetation from the vessel before leaving the boat ramp and associated area.

Response 6: There are many issues that impact the congestion and delays at boat ramps besides removal of drain plugs and vegetation. The requirement to remove drain plugs and vegetation should not increase the time significantly. Vessels may also be pulled away from the boat ramp to associated parking areas to do these requirements.

Comment 7: The department received several comments concerning rule enforcement and associated fines.

Response 7: Initially, AIS staff will be focused on educating the public, then implementing enforcement based on assessment of the effectiveness of education efforts. As with any enforcement officer, wardens will have the discretion in deciding whether or not a citation should be issued. Enforcement as a tool to address compliance will be evaluated on a case-by-case basis.

Comment 8: The department received one comment stating more specific language should be added about how long is required to effectively dry a boat.

Response 8: The department has amended the proposed rule to include that the duration of time required to effectively dry a boat depends on weather conditions.

Comment 9: The department received comments concerning the inexperience of the inspectors making decisions to confiscate or lock a vessel.

Response 9: The department has amended the proposed rule to remove the confiscation language and to specify that AIS staff will decontaminate as arranged by the department. While seasonal AIS workers may be doing initial inspections, washing, and flushing, more experienced, trained AIS staff will be involved in making the decision to lock a vessel.

Comment 10: The department received two comments stating the eastern fishing district regulations allowing the transport of live fish are inconsistent with the proposed rule language.

Response 10: The proposed rule language includes an exception for transport of live fish where provided in current published fishing regulations.

Comment 11: The department received several comments stating suggestions for improvements to the overall AIS program outside the scope of this rulemaking.

Response 11: The department values and appreciates these suggestions and will evaluate these comments for the future advancements in the AIS program.

Comment 12: The department received two comments stating that the department should clear weeds at boat ramps to prevent spread.

Response 12: The department will evaluate the need and will work with boat ramp owners in the future to evaluate the efficacy of the comment.

Comment 13: The department received a comment stating that the department should provide the vessel owner verification that the boat had passed the second inspection and is therefore considered decontaminated.

Response 13: The decontamination order will include the vessel has passed a second inspection.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State May 9, 2016